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Attorneys for Defendant United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VALERIE THAMES et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 08-2617 SC

**STIPULATION FOR COMPROMISE  
SETTLEMENT AND RELEASES;  
~~PROPOSED~~ ORDER**

THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE  
FOLLOWING STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE  
(hereinafter, "Stipulation and Agreement"):

IT IS HEREBY STIPULATED AND AGREED as follows:

1. The parties to this Stipulation and Agreement are plaintiffs Valerie Thames and Christopher Smith, a minor represented by his Court appointed Guardian ad litem, Aisha Roach (hereinafter "Plaintiffs"), on the one hand, and all of the named defendants, including the United States of America and San Francisco Veterans Administration Medical Center, on the other hand. The named defendants, including the United States of America and San Francisco Veterans Administration Medical Center are collectively referred to in this Stipulation and Agreement as

1 “the Defendants.” Plaintiffs and the Defendants are collectively referred to in this Stipulation  
2 and Agreement as “the Parties” and individually as a “Party.”

3 2. Plaintiffs and the Defendants hereby agree to settle and compromise the above-entitled  
4 action under the terms and conditions set forth herein, which agreement shall not become  
5 effective until such time as the Court approves Plaintiffs’ motion to approve a compromise  
6 settlement by a minor.

7 3. The United States of America agrees to pay to Plaintiffs and their counsel, the Dorit Law  
8 Firm, the sum of Five Hundred Thousand Dollars and No Cents (\$500,000), under the terms and  
9 conditions set forth herein, which sum shall be in full settlement and satisfaction of any and all  
10 claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by  
11 reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,  
12 damage to property and the consequences thereof, resulting, and to result, from the same subject  
13 matter that gave rise to the above-captioned lawsuit, for which Plaintiffs, their heirs, executors,  
14 administrators, or assigns, and each of them, now have or may hereafter acquire against the  
15 United States of America or its agents, servants, and employees.

16 4. Plaintiffs and their heirs, executors, administrators or assigns hereby agree to accept the  
17 sum of Five Hundred Thousand Dollars and No Cents (\$500,000) from the United States of  
18 America in full settlement and satisfaction of any and all claims, demands, rights, and causes of  
19 action of whatsoever kind and nature, arising from, and by reason of any and all known and  
20 unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the  
21 consequences thereof which they may have or hereafter acquire against the United States of  
22 America or its agents, servants and employees on account of the same subject matter that gave  
23 rise to the above-captioned lawsuit. Plaintiffs and their heirs, executors, administrators or  
24 assigns further agree to reimburse, indemnify and hold harmless the United States of America  
25 and its agents, servants or employees from any and all such causes of action, claims, liens, rights,  
26 or subrogated or contribution interests incident to or resulting from further litigation or the  
27 prosecution of claims by Plaintiffs or their heirs, executors, administrators or assigns against the  
28 United States of America.

1        5. In consideration of the payment of Five Hundred Thousand Dollars and No Cents  
2 (\$500,000) by the United States of America and the other terms of this Stipulation and  
3 Agreement, Plaintiffs agree to immediately upon execution of this Stipulation and Agreement,  
4 execute the accompanying Stipulation For Dismissal with Prejudice, which stipulation shall  
5 dismiss, with prejudice, all claims asserted in this Action or any claims that could have been  
6 asserted in this Action, which is captioned Valerie Thames and Christopher Smith v. United  
7 States of America et al., C 08-2617 SC. The fully executed Stipulation For Dismissal with  
8 Prejudice will be held by counsel for the United States of America and will not be filed with the  
9 Court until Plaintiffs have received the settlement amount to be paid by the United States of  
10 America.

11        6. This Stipulation and Agreement is entered into by all Parties for the purpose of  
12 compromising disputed claims and avoiding the expenses and risks of litigation. This settlement  
13 does not constitute an admission of liability or fault on the part of any Party.

14        7. It is agreed, by and among the Parties, that no Party may make any claim for attorney's  
15 fees or other costs or expenses of litigation against the Defendants, their agents, servants, or  
16 employees in connection with the above-captioned lawsuit.

17        8. It is agreed, by and among the Parties, that this Stipulation and Agreement may be pled as  
18 a full and complete defense to any subsequent action or other proceeding which arises out of the  
19 claims released and discharged by this Stipulation and Agreement.

20        9. It is agreed, by and among the Parties, that the Five Hundred Thousand Dollars and No  
21 Cents (\$500,000) paid by the United States of America represents the entire amount of the  
22 compromise settlement and that the respective Parties will each bear their own costs, fees, and  
23 expenses and that any attorneys' fees owed by the Plaintiffs will be paid out of the settlement  
24 amount and not in addition thereto.

25        10. The Five Hundred Thousand Dollars and No Cents (\$500,000) paid by the United States  
26 of America will be made by wire transfer or other electronic means to a bank account to be  
27 designated in writing by Plaintiffs' counsel. Plaintiffs' counsel shall be responsible for  
28 distributing the funds transferred to the bank account designated in writing by Plaintiffs' counsel

1 to Plaintiffs.

2 11. Counsel for the United States of America will submit a request for Judgment Fund  
3 payment within 48 hours after the Court approves this Stipulation and Agreement. The Parties  
4 recognize that payment from the Judgment Fund is often not available for 45 to 60 days after  
5 approval of the settlement by the Court.

6 12. Plaintiffs forever release and discharge the United States of America and any and all of  
7 their past and present officials, employees, agents, attorneys, their successors and assigns, from  
8 any and all obligations, damages, liabilities, actions, causes of actions, claims and demands of  
9 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or  
10 unknown, arising out of the allegations set forth in Plaintiffs' pleadings in this action.

11 13. The provisions of California Civil Code Section 1542 are set forth below:

12 "A general release does not extend to claims which the creditor  
13 does not know or suspect to exist in his favor at the time of  
14 executing the release, which if known by him must have materially  
15 affected his settlement with the debtor."

16 The Parties, having been apprised of the statutory language of Civil Code Section 1542 by an  
17 attorney of each Party's own choosing, and fully understanding the same, nevertheless elects to  
18 waive the benefits of any and all rights each Party may have pursuant to the provision of that  
19 statute and any similar provision of federal law. The Parties understand that, if the facts  
20 concerning injuries or liability for damages pertaining thereto are found hereinafter to be other  
21 than or different from the facts now believed by each Party to be true, this Stipulation and  
22 Agreement shall be and remain effective notwithstanding such material difference.

23 14. The Parties agree that this Stipulation and Agreement is intended to be a full and final  
24 settlement of all claims arising out of the allegations set forth in Plaintiffs' pleadings in this  
25 action.

26 15. This Stipulation and Agreement shall constitute the entire agreement between the Parties,  
27 and it is expressly understood and agreed that this Stipulation and Agreement has been freely and  
28 voluntarily entered into by the Parties hereto with the advice of counsel of each Party's choosing,  
which counsel have explained the legal effect of this agreement. The Parties further

1 acknowledge that no warranties or representations have been made on any subject other than as  
2 set forth in this Stipulation and Agreement. This Stipulation and Agreement may not be altered,  
3 modified or otherwise changed in any respect except by writing, duly executed by all of the  
4 Parties or their authorized representatives.

5 16. If any withholding or income tax liability is imposed upon Plaintiffs based on payment of  
6 the settlement sum as set forth herein, Plaintiffs shall be solely responsible for paying any such  
7 liability.

8 17. The Parties agree that the District Court shall retain jurisdiction over this matter for the  
9 purposes of resolving any dispute alleging a breach of this Stipulation and Agreement.

10 18. Each Party acknowledges that they have been represented by and have relied upon  
11 independent counsel in negotiating, preparing and entering into this Stipulation and Agreement  
12 and that they have had the contents of this Stipulation and Agreement fully explained by counsel  
13 and that they are fully aware of and understand all of the terms of the agreement and the legal  
14 consequences thereof. It is further acknowledged that the Parties have mutually participated in  
15 the drafting of this Stipulation and Agreement and it is agreed that no provision herein shall be  
16 construed against any Party hereto by virtue of the drafting of this Stipulation and Agreement.

17 19. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or  
18 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in  
19 any way be affected or impaired thereby. This Stipulation and Agreement shall constitute the  
20 entire agreement between the parties, and it is expressly understood and agreed that this  
21 agreement has been freely and voluntarily entered into by the parties hereto with the advice of  
22 counsel, who have explained the legal effect of this Stipulation and Agreement. The Parties  
23 further acknowledge that no warranties or representations have been made on any subject other  
24 than as set forth in this Stipulation and Agreement.

25 20. The Parties agree that, should any dispute arise with respect to the implementation of the  
26 terms of this Stipulation and Agreement, no Party shall seek to rescind the Stipulation and  
27 Agreement and pursue any of the original causes of action. Each Party's sole remedy in such a  
28 dispute is an action to enforce the Stipulation and Agreement in district court. The Parties agree

1 that the district court will retain jurisdiction over this matter for the purposes of resolving any  
2 dispute alleging a breach of this Stipulation and Agreement. This Stipulation and Agreement  
3 may be signed in counterparts, and any signature on a signature page transmitted by facsimile or  
4 by PDF shall be treated the same as an original signature and shall be deemed binding and fully  
5 effective.

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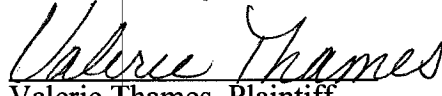
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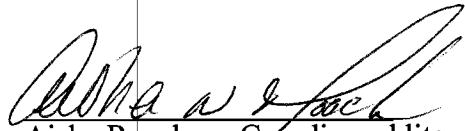


21. The Parties further agree that the filing of this executed Stipulation and Agreement shall notify the Court of the agreement by Plaintiffs and the United States to vacate all pending discovery, motion hearing dates, settlement or pretrial deadlines and trial date associated with this litigation.

DATED: June 12, 2009


  
Valerie Thames, Plaintiff

DATED: June 12, 2009

  
Aisha Roach, as Guardian ad litem for  
Plaintiff Christopher Smith, a minor

DATED: June 12, 2009


By:

  
J. NILEY DORIT  
Attorney for Plaintiff

JOSEPH P. RUSSONIELLO  
United States Attorney

DATED: June 12, 2009

By:

  
MICHAEL T. PYLE  
Assistant United States Attorney  
Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: June 12, 2009

